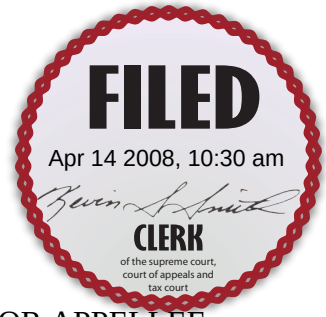

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IN THE
COURT OF APPEALS OF INDIANA

HEATHER PARKS,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 18A05-0709-JV-545
	)	
INDIANA DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
The Honorable Joseph Speece, Master Commissioner
Cause No. 18C02-0409-JT-29
Cause No. 18C02-0409-JT-30

April 14, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

This case is before us once again, following this court's remand to the trial court for the entry of proper findings of fact and conclusions of law because the original findings merely recited the testimony of several witnesses. Parks v. Delaware County Dep't of Child Servs., 862 N.E.2d 1275, 1281(Ind. Ct. App. 2007). Now, appellant-respondent Heather Parks appeals[1] the involuntary termination of her parental rights as to her sons, J.P. and B.P., claiming that the subsequent findings are inadequate because the trial court merely rephrased the earlier findings.

Parks also contends that there is not clear and convincing evidence to support the trial court's order terminating her parental rights. Specifically, Parks argues that the Delaware County Division of Family Services (DFS) failed to prove that there was a reasonable probability that the conditions which resulted in the children's removal or the reasons for placement will not be remedied, that the continuation of the parent-child relationship posed a threat to the well-being of the children, or that termination of her parental rights were in the children's best interests. Finding no error, we affirm the judgment of the trial court.

FACTS

As reported in the prior appeal, the facts are as follows:

> Mother and Father have two sons: J.P., born October 29, 1998; and B.P., born September 23, 2000. In March 2003, the Delaware County Department of Child Services ("DCDCS") filed individual petitions

[1] The children's father, Jimmie Phillips, has not filed an appellate brief in this subsequent appeal.

> alleging that the Children were children in need of services ("CHINS").[2] Thereafter, the trial court determined that the Children were CHINS and ordered Mother and Father to have supervised visitation for one hour per week and noted that the visitation would increase once Mother and Father were able to demonstrate that they were learning "appropriate parenting skills and fulfilling parental obligations." Ex. p. 12. The trial court also ordered Mother and Father to, among other things, participate in family service programs and have a psychological evaluation and treatment.
>
> In September 2004, the DCDCS filed individual petitions to involuntarily terminate Mother and Father's parental rights to the Children. In the termination petitions, the DCDCS alleged, in relevant part, that the continuation of the parent-child relationship posed a threat to the well-being of the Children and that termination was in the best interests of the Children. The trial court held hearings on the termination petitions on June 27, 2005, November 14, 2005, and March 13, 2006. The trial court ordered the parties to submit proposed findings of fact and conclusions of law, and on June 29, 2006, the trial court adopted and signed the DCDCS's proposed findings and ordered the involuntary termination of Mother and Father's parental rights to the Children. Specifically, the trial court concluded, in part, that there was a reasonable probability that the continuation of the parent-child relationship posed a threat to the well-being of the Children and that termination of the parent-child relationship was in the best interests of the Children. Mother and Father now appeal.

Parks, 862 N.E.2d at 1277.

As noted above, we determined in the original appeal that the majority of the trial court's findings were mere recitations of testimony and witness opinions. Id. at 1279. Thus, we concluded that the trial court's findings were insufficient to support the termination order, and we remanded this cause to the trial court for the entry of proper findings and conclusions of law. Id.

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[2] The CHINS petitions alleged that on January 23, 2003, the DFS received a report that J.P. had a bruise on his forehead, and that B.P. had been transported to the hospital emergency room for RSV infection. Ex. p. 5. Thereafter, at an unannounced welfare check on February 20, 2003, the children were found home alone. When Parks arrived at the residence, she told the authorities that she had asked her step-sister, Diana Blankenship, to care for the children. However, Parks had been previously warned not to have Blankenship supervise or baby-sit the children "due to a substantiated physical abuse report on . . . Blankenship." Id.

On August 21, 2007, the trial court issued amended findings and again ordered the termination of Parks's parental rights as to both children. The trial court entered the following findings:

> 4. The services provided for Heather Parks to assist her in the areas of concern, included parenting group therapy, women's group therapy, case management services and medical care.
>
> 5. There has been no progress made by Heather Parks in meeting the goals and objectives established in therapy or with case management services.
>
> 6. Despite being in the Supportive Employment Program, Heather Parks has never sustained employment for longer than a two . . . month period (and that even only occurred once).
>
> 7. Heather Parks maintains that she has no need for services.
>
> 8. That during individual therapy, Heather Parks continues to exhibit poor judgment and lack of insight.
>
> 9. That during a period when Heather Parks' housing was unstable, she refused to enter into the program at the Shepherd Center, which would have allowed her to have placement with her children. Even after being notified that entering into the Shepherd Center Program could lead to the placement of her removed children back with her, she still refused to enter that program.
>
> . . .
>
> 12. Jimmie Phillips has made no progress in addressing his impulsive nature, his anger, his ability to plan and anticipate and his relationships with other people, including Heather Parks and his children.
>
> 13. The relationship between Heather Parks and Jimmie Phillips is volatile and chaotic, that the two do not listen to each other, that they constantly break apart and reconcile, and that this has been the consistent pattern of their relationship since beginning therapy.

14. Heather Parks and Jimmie Phillips were ordered to obtain family counseling, parenting skills training, home budgeting training and homemaking skills and that all of these services were still in place at the time of the hearing, but there has been no progress in addressing any of the identified problems.

15. Heather Parks and Jimmie Philips continually refused to provide any information concerning their income, bills, receipts, and budgeting, despite numerous requests for this information.

. . .

19. There has been no progress in either Heather Parks or Jimmie Phillips in developing appropriate parenting techniques, and they have a very difficult time keeping control of the children, and the behavior of the children became more problematic when they were with their parents.

20. Due to the unstructured, chaotic, and argumentative nature of Heather Parks' and Jimmie Phillips personal relationship, they are unable to provide the structured environment necessary for B.P. and J.P.

21. The children's behavior [has] tremendously improved since being placed in foster care and that the highly structured home and school routines have been crucial in that development.

Appellant's App. p. 371-75. Parks now appeals.

DISCUSSION AND DECISION

I. Subsequent Findings

Parks first claims that the termination of parental rights order must be set aside on the grounds that the trial court's subsequent findings were erroneous because they merely "rephrased" the earlier findings. In particular, Parks claims that the findings are inadequate because the trial court simply deleted the phrase that "the witness testified that" in several of the alleged "findings." Appellant's Br. p. 12. Moreover, Parks argues

that the subsequent findings did not conform to the evidence that was presented at the hearing.

As this court discussed in Parks's prior appeal, findings which indicate that the testimony or evidence "was this or the other are not findings of fact." Parks, 862 N.E.2d at 1279 (quoting Moore v. Ind. Family & Social Servs. Admin., 682 N.E.2d 545, 547 (Ind. Ct. App. 1997)). Rather, a finding of fact must indicate "not what someone said is true, but what is determined to be true, for that is the duty for the trier of fact." Parks, 862 N.E.2d at 1279. The trier of fact must adopt the testimony of the witness before the finding may be considered a finding of fact. Id.

In this case, Parks correctly observes that the trial court deleted any reference in the subsequent findings regarding the witness's testimony. However, it is apparent that the trial court's new findings were based on the entirety of the record and on the evidence that was presented by Parks, the Case Manager, a therapist, the foster parent, and other DFS personnel. In other words, the trial court made specific findings—based on the evidence presented—that led it to order the termination of the parent-child relationship. Therefore, Parks's claim that the trial court's subsequent findings were erroneous on this basis fails.

As for Parks's contention that the findings did not conform to the evidence that was presented at the final hearing, she is merely disagreeing with the substance of the findings that the trial court entered. Thus, Parks's contention is more akin to her challenge to the sufficiency of the evidence, which we discuss below.

II. Sufficiency of Termination

Parks contends that the order terminating her parental rights with regard to B.P. and J.P. must be set aside because the DFS failed to prove by clear and convincing evidence that there was a reasonable probability that the conditions that resulted in the childrens' removal from her residence will not be remedied, that the continuation of the relationship posed a threat to the children, or that termination of the parent child relationship was in the best interests of the children.

In addressing these claims, we initially observe that we will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). We neither reweigh the evidence nor judge the credibility of witnesses, and we will consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

Additionally, when the trial court has made findings of fact and conclusions of law in a parental termination case, we apply a two-tiered standard of review. Parks, 862 N.E.2d at 1279. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. We will not set aside the trial court's findings or judgment unless they are clearly erroneous. Id. Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. Id. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. Id. In order to determine that a finding or conclusion is

clearly erroneous, our review of the evidence must leave us with the firm conviction that a mistake has been made. Id.

We further acknowledge that the involuntary termination of parental rights is the most extreme sanction that a court can impose on a parent because termination severs all rights of a parent to his or her children. Id. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

Indiana Code section 31-35-2-8(a) provides that "if the court finds that the allegations in a petition described in [Indiana Code section 31-35-2-4] are true, the court shall terminate the parent-child relationship." Indiana Code section 31-35-2-4(b)(2) provides that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

(A) one (1) of the following exists:

> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> (ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or

> (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

The DFS must prove its allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind.1992). Moreover, we note that in termination proceedings, the trial court should judge a parent's fitness to care for the children as of the time of the termination proceedings, taking into consideration changed conditions and the parent's habitual pattern of conduct. Knott v. Tippecanoe County Dep't of Pub. Welfare, 632 N.E.2d 752, 756 (Ind. Ct. App. 1994). Additionally, the trial court must examine the patterns of conduct in which the parent has historically engaged in order to determine if future changes are likely to occur. In re Involuntary Termination of Parent Child Relationship of D.L., 814 N.E.2d 1022, 1028 (Ind. Ct. App. 2004).

In this case, Dr. Paul Spengler, a licensed psychologist and associate professor of psychology at Ball State University, testified at the final hearing that he evaluated Parks to assess her parental fitness and provide diagnostic input. Tr. p. 22. A personality profile revealed that Parks likely had chronic problems with anxiety, worry, depression, and feelings of social inadequacy. Id. And, absent sufficient support for Parks, including home training and long term monitoring, Dr. Spengler determined that Parks would be at risk for making poor parenting decisions. Id. at 30.

The evidence also established that neither parent made any progress in implementing parenting skills during DFS's involvement. Id. at 158-59. As a result, Parks's supervised visitation periods with the children were not increased. Id. at 153-54. It was further demonstrated that Parks was unable to learn the "basics" of budgeting and paying bills. Id. at 49-50. Randy Lykens, the Family Centered Services Case Manager with Comprehensive Mental Health Services (CMHS) testified that he had worked with Parks since June 2003 and had observed that Parks was dismissive and evasive when he attempted to address money issues with her. Id. at 52. On at least one occasion, Parks had fraudulently obtained Christmas presents for the children from charitable organizations.

Both parents also demonstrated a minimal understanding of the needs and limitations of their children, and the evidence established that Parks made no progress in meeting any of the parenting goals that had been established by the DFS. Id. at 57. The DFS caseworkers also observed that Parks and Phillips are loud, extremely impulsive, and violent when they are with the children. In light of these observations, as well as the

Parkses' poor judgment, their inability to anticipate "acting out" behaviors of the children, not adequately supervising the children, and their propensity to argue and fight in front of the children, Lykens opined that the Parkses were unable to adequately parent the children. Id. at 57-58.

Barbara Hisel, a therapist at CMHS, counseled the Parkses for over two years. Hisel observed that their relationship with the children was "volatile" and "chaotic." Id. at 90. Hisel saw no improvement by either parent during the course of the therapy sessions, and she was concerned for the physical safety of the children if they were left in the care of the parents. Moreover, Hisel believed that the parents lacked the skills to control their children's behavior and that the foster parents are much better equipped to deal with the children's needs. In light of her observations, Hisel believed that it was in the best interests of the children to terminate the parental rights of both parents. Id. at 96.

J.P.'s school teacher observed that J.P. was dirty and acted aggressively toward the other children and teachers when he was in Parks's care. However, once J.P. was placed in foster care, he was always clean, happy, and ready to participate. Id. at 117.

The children's foster mother observed that when the children were initially placed in her care, they would run, scream, kick, and bite. Id. at 133. However, shortly after placement, the children made significant progress in terms of their behavior and academic achievement. Id. at 134-38.

The Court Appointed Special Advocate (CASA) observed that Parks had significant difficulties controlling the children. Id. at 178. The CASA also testified that the children had made significant progress while in foster care. Hence, the CASA

believed it was in the best interests of the children to terminate the rights of the parents. Id. at 177.

In light of the above, ample evidence was presented that the children would be in danger if they were placed with Parks, that the children were thriving in foster care, and that it was in the best interest of the children for the parental rights of the Parkses to be terminated. In essence, while Parks may have demonstrated that she cared about the children, she was simply unable to provide a safe and stable environment for them. Hence, the trial court reasonably concluded, from the evidence presented, that there was a reasonable probability that the conditions which resulted in the children's removal would not be remedied. In effect, Parks's claims amount to an invitation to reweigh the evidence—an invitation that we decline. Thus, we conclude that the trial court's decision to terminate the Parkses' parental rights as to B.P. and J.P. was not clearly erroneous.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.